

appropriate baseline and how it can avoid the unintended consequence that the federal fund bears a larger cost burden without any measurable effect on Lifeline subscriber's rates.

These questions arise because the Recommended Decision has lost sight of the division of jurisdictional responsibility between the state and federal jurisdictions that is contained in Section 254. The existing Lifeline program permits each jurisdiction to reduce the rates charged to qualifying end users. In the interstate jurisdiction, the charge that is reduced is the subscriber line charge. For residential users this charge is capped at \$3.50. The Recommended Decision is opposed to any increase in this charge. Accordingly, in recommending an interstate Lifeline amount of \$5.25, there is a \$1.75 gap between the proposed baseline amount to be funded and the interstate end user rate that can be offset. While that \$1.75 could be used to offset the implicit support reflected in interstate access charges, such offset would not directly affect a Lifeline subscriber's charges.

The appropriate federal baseline amount should be set at the interstate charges paid by end users. At present it is the subscriber line charge. In the event the Commission adopts an end user surcharge as a recovery mechanism for universal service support contributions, then such surcharges could also be included in the baseline amount.

Regardless of the baseline amount, the Commission should be mindful of the fact that, as a general matter, Section 254 contemplates distinct federal and state high cost/ low income funds. The statute does not evidence any intent to transfer to the interstate jurisdiction the full responsibility of these programs. In fact, it specifically provides that nothing in Section 254 is intended to affect the Commission's Lifeline rules.³⁶

³⁶ See 47 U.S.C. Section 254 (j).

V. SCHOOLS AND LIBRARIES

In the following section, BellSouth comments upon the Joint Board's recommendations regarding universal service support for schools and libraries.

A. Services, Functionalities And Equipment Included As Eligible For Universal Service Support.

BellSouth shares the Joint Board's goals of making available to schools and libraries the full panoply of telecommunications and information services, as well as its view regarding the importance of these services to enhancing various educational goals. The availability and usefulness of such resources, as recognized by the Joint Board, will depend largely upon a variety of factors, not merely improved access to telecommunications services.

However, the Commission must recognize that Congress, in enacting the universal service provisions of the Act, did not intend the universal service fund to be a substitute for local community support or to provide the monetary support for the entire array of components needed by schools and libraries. The Act was intended to provide a means of support merely for telecommunications services provided by telecommunications carriers. As the following discussion demonstrates, the Joint Board improperly has concluded that universal service fund ("USF") support may be provided to non-telecommunications carriers and for non-telecommunications services. If the Commission follows this recommended course, the Commission will be inviting litigation in the courts challenging the Commission's authority to do so.

In the following discussion, BellSouth addresses the fallacies of the Joint Board's recommendations in this regard. The particular sections upon which the Joint Board relies as support for its far-reaching concept of USF support, Sections 254(h)(1)(B) and 254(h)(2), cannot

and do not override the explicit limitations established in the Act regarding the class of entities and services which are eligible for USF support. Contrary to the Joint Board's view, the Act limits recipients of USF support to telecommunications carriers. Additionally, it limits those services which are eligible for USF support to telecommunications services. Internet service and internal connections are not telecommunications services, nor are the providers of such services and connections telecommunications carriers with regard to such services and connections.

1. The Act Limits USF Support Recipients To “Telecommunications Carriers.”

The Act specifically provides that USF support may be provided “only” to telecommunications carriers. Section 254(e) provides that

only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.³⁷

Section 214(e) provides similarly that

A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with Section 254....³⁸

The Joint Board has incorrectly deemed non-telecommunications carriers to be eligible for USF support under this provision. The Joint Board states,

Because non-telecommunications carriers are not obligated to contribute to universal service support mechanisms, they would not be entitled to an offset. Non-telecommunications carriers providing eligible services to schools and libraries, therefore, would be entitled only to reimbursement from universal service support mechanisms.³⁹

³⁷ 47 U.S.C. Section 254(e) [emphasis supplied].

³⁸ 47 U.S.C. Section 214(e) [emphasis supplied].

³⁹ Order at para. 613.

The provision relating to reimbursement, however, Section 254(h)(1)(B), also limits USF support to “telecommunications carrier[s] providing service under this paragraph.”⁴⁰ Although this provision states that a telecommunications carrier may receive reimbursement despite the fact that it has not been designated to receive USF support under Section 214(e), those entities authorized to receive such reimbursement are still, nevertheless, limited to “telecommunications carriers.”⁴¹

There is no provision in the Act which overrides these specific limitations on the class of entities which can receive USF support. Even the other provision of the Act upon which the Joint Board relies, Section 254(h)(2), merely provides that the Commission

shall establish competitively neutral rules --

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.

There is nothing in this provision authorizing the Commission to override the more explicit provisions of the Act, specifically Sections 214(e), 254(e) and 254(h)(1), which limit recipients to telecommunications carriers. Thus, Section 254(h)(2) must be read as providing the Commission

⁴⁰ 47 U.S.C. Section 254(h)(1)(B)[emphasis supplied]. This provision states, in pertinent part,

A telecommunications carrier providing service under this paragraph shall --

(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

⁴¹ Id.

with the authority to establish rules to “enhance” such “access” within the overall framework established in the aforementioned provisions of the Act.

2. The Act Limits Services Which Are Eligible For Universal Service Support To Telecommunications Services.

The Joint Board recommends that the telecommunications services eligible for universal service support for schools and libraries be broader than the “core” services designated as eligible under Section 254(c)(1).⁴² BellSouth supports this notion, and believes that Section 254(c)(3) does provide the Commission with the authority to designate additional telecommunications services for purposes of Section 254(h) beyond those telecommunications services designated under Section 254(c)(1) as “core” services.

However, the Act does not authorize the Commission to designate non-telecommunications services as eligible for USF support. Thus, the Joint Board’s recommendation that the Commission adopt a program of USF support for Internet access and internal connections cannot be adopted. Instead, the Commission must limit eligible services to telecommunications services.

The Act explicitly provides that universal service is “an evolving level of telecommunications services.”⁴³ The Commission is provided the authority to determine which telecommunications services are considered to be within the definition of universal service both for core support purposes⁴⁴ and for the purposes of subsection (h).⁴⁵ Section 254(c)(1) provides

⁴² Order at paras. 458-460.

⁴³ 47 U.S.C. Section 254(c)(1) [emphasis supplied].

⁴⁴ Id.

⁴⁵ 47 U.S.C. Section 254(c)(3).

that the Commission may vary its definition of which telecommunications services are universal services, from time to time, for core purposes. Section 254(c)(3), provides that the Commission may designate additional telecommunications services as eligible for USF support for purposes of subsection (h) beyond those included in the Commission's core definition. Section 254(c)(3), however, does not provide that such additional universal services may include non-telecommunications services. Nor does any other provision of the Act.

Even Section 254(h)(2), which requires the Commission to establish rules to "enhance...access to advanced telecommunications and information services," does not authorize USF support dollars for non-telecommunications services. As indicated in V.A.1 above, this subsection, which is included as a subpart to Section 254(h) entitled "Telecommunications Services for Certain Providers," cannot override the explicit provisions of Section 254(c)(1) limiting universal services to such telecommunications services as the Commission shall designate.

Congress could have concluded that "universal service" is an evolving level of both telecommunications services and non-telecommunications services and that the Commission was authorized to define which services are to be included, from time to time, within such combined universe of both types of services.⁴⁶ Congress did not do so, however. The Act itself defines universal services for purposes of both Section 254(c)(1) and (c)(3) as being no greater than the universe of all telecommunications services, with the Commission having the authority to designate which telecommunications services within that universe are (c)(1) services and which

⁴⁶ Such a provision would have raised additional legal problems, but the proposition is set forth here for the purposes of illustrating the limitations which Congress did, in fact, place upon the universe of "services" from which the Commission could designate universal services, i.e., the universe of telecommunications services, not the universe of both telecommunications and non-telecommunications services.

telecommunications services are (c)(3) services for the purposes of subsection (h). Consistent with the view of universal service as an evolving concept, but as including telecommunications services only, the Commission may change its view of which telecommunications services are (c)(1) and (c)(3) services from time to time, but the Commission, nevertheless, cannot designate services which are not within the overall category of telecommunications services.

To interpret Section 254(c)(3) as providing authority for the Commission to designate additional “services” for USF support, regardless of whether they are “telecommunications services,” would mean that the Commission could designate any “services” whatsoever for the purposes of subsection (h), whether or not even remotely related to telecommunications services, as long as, of course, provided “for educational purposes.”⁴⁷ Indeed, if this view were adopted, there would be nothing in Section 254(c)(3) which would limit the “services” which could be designated to the information services and internal connections which the Joint Board recommends be included in the USF program “at this time.”⁴⁸ Under such a view, the Commission would have the authority to provide USF support for an unending variety and scope of “services.”⁴⁹ The Act does not provide the Commission with such expansive authority and, as

⁴⁷ Thus, not only could the Commission presumably designate information services as eligible for universal service support, but also teacher training, tutoring, cultural arts programs and any other “services” which a school or library might use for educational purposes. Moreover, the term “services” might even encompass school lunches, electricity, heat and air, plumbing, painting and general maintenance for schools facilities, depending upon how expansive a view of Section 254(h)(1)(B)’s “for educational purposes” requirement is taken.

⁴⁸ Order at para. 465.

⁴⁹ Moreover, the Joint Board seems to have ignored the problem created by its recommended approach regarding what definitional boundaries would be placed on the non-telecommunications “services” eligible for support. For instance, would routers, hubs, file servers and wiring only be eligible for support if provided by an entity which also obligated itself to service and maintain this equipment? Similarly, would such equipment not be eligible for support if sold outright by an (Continued...)

such, the Commission must reject the Joint Board's recommendation regarding the inclusion of non-telecommunications services in the USF support program.

3. Information Service Providers And Providers Of Internal Connections Are Not Eligible To Receive USF Support.

Information services and internal connections are not "telecommunications services" within the meaning of the Act. Likewise, providers of information services and internal connections are not "telecommunications carriers" with respect to such services and connections.

The Commission has long held that information services and internal connections are not common carrier services and that entities offering them are not common carriers with respect to such offerings.⁵⁰ As non-common carriers, entities providing such services and connections have no obligation to serve, and can decide whether and on what terms to provide such services and connections.⁵¹

Nothing in the Act changes the status of such entities or such offerings. Rather, the Act continues to differentiate "information services" from "telecommunications services," the latter being common carrier services, the providers of which are common carriers. Specifically, Section 3(44) defines "telecommunications carrier" as

entity which had no such obligation to service and maintain it (where, for instance, the school had its own staff to maintain the internal network)? Would only the installation and servicing of such equipment be included, or would the sale or lease of such equipment also be included?

⁵⁰ See Computer Inquiry II, Final Decision, 77 FCC 2d 384 (1980), Reconsideration Order, 84 FCC 2d 50 (1980), Further Reconsideration Order, 88 FCC 2d 512(1981); Modifications to the Uniform System of Accounts for Class A and B Telephone Companies, 48 Fed. Reg. 50534 (Nov. 2, 1983); Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (Mar. 12, 1986), recon., 1 FCC Rcd 1190 (1986), further recon., 3 FCC Rcd 1719 (1988).

⁵¹ National Association of Regulatory Utility Commissioners v. F.C.C., 525 F.2d 630, 641 (D.C. Cir. 1976), cert. den. 425 U.S. 992 (1976).

any provider of telecommunications services....A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services....⁵²

Pursuant to this definition, any provider of a “telecommunications service” is a common carrier with regard to that telecommunications service. “Telecommunications service” is defined as

the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.⁵³

In contrast, an “information service” is defined to specifically exclude telecommunications services. Section 3(20) provides that an “information service” is

the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

If the Commission were to adopt the Joint Board’s recommendation to provide universal service support to information service providers and providers of internal connections, it could do so only by finding that such services and connections are telecommunications services and the providers of such are telecommunications carriers with respect to such services and connections, thus ignoring its historical treatment of such services and connections as well as these statutory definitions. As such, the providers of such services and connections, whether electricians, contractors, wiring and equipment providers, or otherwise, would no longer have the discretion to

⁵² 47 U.S.C. Section 153(44).

⁵³ 47 U.S.C. Section 153(46). The Act defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. Section 153(43).

determine whether and on what terms to serve. To consider such providers to be common carriers, however, would be an absurd result neither intended nor authorized by the 1996 Act.

Moreover, any determination to include information services and internal connections in the USF support program would not be competitively neutral. For instance, the recommended rules permit non-telecommunications carriers, which do not pay into the USF, to draw funds from the USF. Entities which could become future competitors would be able to withdraw from the fund for their provision of such services and connections in anticipation of using them in connection with their future provision of telecommunications services. Although a fund limited to telecommunications carrier recipients could also involve funding by any given telecommunications carrier of another telecommunications carrier, the recipients would at least be limited to those entities contributing to the fund.

Additionally, the Joint Board's recommendation that non-telecommunications services be eligible for USF support is bad public policy. Such a scheme would require telecommunications carriers to provide funds for the support and benefit of other entities who are not also contributing to the fund. BellSouth believes that Internet access, E-mail and internal connections are important for schools and libraries, but other alternatives are available to fund them, not the least of which is local community support, either through state or local tax funding or private contributions from the overall community. Clearly the Act did not intend to usurp local community involvement and responsibility for its schools.

If the Commission does determine, nevertheless, to include non-telecommunications services in the USF program and such an approach withstands legal challenge, it should address several specific matters. First, BellSouth is concerned that the Joint Board's proposal to fund

non-telecommunications services could result in a huge proportion of the USF being taken away from those telecommunications services that the Act was intended to fund. While BellSouth, as indicated in the following section of these Comments, supports the recommendation for a cap on the overall education fund size, if the Commission determines to include non-telecommunications services, it should consider adopting a double-cap approach under which amounts available for such non-telecommunications services and connections would be limited to a set amount below the overall education cap. The Commission should also consider adopting a sunset measure in order to limit the time period during which USF support would be available for internal connections.⁵⁴ By this means, there would be some assurance that a major portion of the USF would always remain available for telecommunications services as intended by the Act.

Additionally, the Commission should clarify that services which might be necessary in conjunction with the provision of internal connections to a school (such as retrofitting the school in general for exposed, inadequate electrical wiring and asbestos problems, and the additional liabilities which could be involved) would not be eligible for USF support. The Commission should also limit USF support for internal connections to existing schools and libraries. New schools and libraries constructed after the implementation date of the USF should not be eligible. It should be common practice for new construction to include wiring and equipment for internal connections, or it should at least be considered to be a burden which general local taxpayers in the school or libraries' jurisdiction should bear with regard to new construction, rather than telecommunications carriers.

⁵⁴ This would incent schools and libraries to proceed quickly with obtaining internal connections and could perhaps allow for an earlier evaluation, and possible resizing, of the actual USF funding amounts needed by schools and libraries for other supported services.

B. Discount Methodology.

BellSouth supports many of the aspects of the Joint Board's recommendations regarding the discount methodology for the education portion of the USF. For instance, the Joint Board's proposal for requiring schools and libraries to utilize a competitive bid process and for establishing a simple mechanism for posting of requests for proposals will ensure that many providers will have the opportunity to submit bids, and, thus, brings to the process many benefits which can be gained through the natural operation of competitive forces. The recommendation for use of a bona fide request process recognizes the totality of components needed to make supported telecommunications services function properly. The capped fund size allows for predictability of the maximum amount of support to be provided. The Joint Board's concept of a pre-discount price appropriately recognizes that USF support for schools and libraries need not be based upon cost analyses but rather price levels available in the competitive marketplace. Moreover, several of the recommendations, such as self-certification by carriers, simplify the administrative process. BellSouth nevertheless has several specific comments for Commission consideration.

1. The Requirement For Competitive Bids.

As indicated above, BellSouth supports the Joint Board's recommendation that schools and libraries be required to submit requests for competitive bids and that one way this can be accomplished is by means of posting requests on a Web-site. However, several details of these proposals would need to be worked out. For example, after a Web-site request has been posted, should any material changes to the particular scope and nature of the request be allowed and, if so, what and how? It is possible that a Web-site posting could stimulate a telecommunications

carrier to contact a school or library, and, in the process of working together, the school or library could determine that solutions different from those posted on the Web-site could, as well, meet its needs or that the scope of the request could be expanded such that additional or different needs could be met more efficiently than as contemplated in the original request. The Web-site listing proposal should be flexible enough to accommodate such situations, while at the same time not limiting the information which is available to other carriers and providers who might have responded to the school or library's request had they been aware of the change in the nature and scope of the arrangement. The process should not negate the value of individual and personal service evaluation and consultation that informed telecommunications service providers can contribute.

Moreover, there are numerous administrative details regarding the bid posting requirement, such as the administration of the site, the content of the information provided, and the site's overall user-friendliness. For instance, the Web-site could be used not only as a location for posting bids, but as the location used for posting the assignment of discounts to each school and library so that carriers could easily determine which discount applies.

The Commission should clarify that although schools and libraries must submit requests for competitive bids, they are not required, pursuant to the Commission's USF rules, to take the lowest price bid. Schools and libraries should be afforded the same rights and responsibilities as any other entity that uses a bid process to select a service provider that best meets its needs. Balance must be allowed in the process to weigh service quality and other pertinent factors. If the Commission, through bid experience, finds that abuses have occurred, it could apply additional

controls on the USF reimbursement process, such as funding amounts only up to the amount of selected bids that fall within a certain percentage of the lowest bid.

2. The Pre-Discount Price.

The Joint Board recommends that the services which are eligible for universal service support for schools and libraries be provided at certain discounts off of a pre-discount price, with discounts based upon certain economic and high cost indicators. The pre-discount price would be based upon the “lowest corresponding price” (“LCP”), i.e., “the lowest price charged to similarly situated non-residential customers for similar services.”⁵⁵ USF support would be provided for the monetary difference in the discount price paid by the school or library and the pre-discount price.

The Joint Board appropriately declined to adopt a cost mechanism for determining the amount of USF support for individual services provided to schools and libraries. As it observes, a price-based approach pursuant to a competitive bid process can provide schools and libraries with the many benefits of the competitive telecommunications marketplace. At the same time, the Commission should carefully review certain aspects of the Joint Board’s recommendation.

First, it would seem that the concept of a mandatory LCP would not be required in a truly competitive environment. In areas where there is full competition among service providers to meet the needs of schools and libraries, the natural competitive forces will drive prices down to the appropriate levels. After a few years of experience with the USF program and use of the LCP, the Commission may find it appropriate to revisit the LCP requirement as it applies to competitive areas.

⁵⁵ Order at para. 540.

The Commission, if it adopts the general recommendation of the Joint Board to use the LCP methodology, should make it clear that any provider obtaining USF support under Section 254(h) for schools and libraries will get that support for the difference in the discounted price at which the service is available to the school or library and the LCP of that same provider with respect to that provider's own services and its own non-residential customers. This is the only practicable and clearly lawful manner by which the LCP concept can be applied. Any attempt to force a service provider to provide a service to a school or library at the authorized discounted amount with support based upon the LCP of another bidder would be of questionable legality. Schools and libraries will likely be making choices regarding service providers and services based not only upon price, but also upon factors such as quality of the service itself and the quality of the service provider's customer support functions. All of these factors are inherent characteristics of a competitive market and are factors that distinguish one competitor from another. Moreover, service providers can be subject to varying regulatory obligations, and thus will have varying degrees of pricing flexibility.⁵⁶ To limit a service providers' recovery from the USF to the difference in the price it charges to the school or library and another bidder's LCP could amount to a taking of the winning provider's property without just compensation.

In determining prices for services such as ICBs, BellSouth normally considers such factors as geographical characteristics, service, usage and billing characteristics, and the nature of the

⁵⁶ This would appear to be particularly true with respect to non-telecommunications service providers who have significant flexibility in the pricing of their service. Indeed, if the Commission determines that non-telecommunications services should be included, it should clarify whether the LCP concept is intended to apply at all to non-telecommunications services and, if so, how this could be administered, if at all, in a competitively neutral fashion, given the total lack of regulatory oversight regarding the provisioning and pricing of such services.

underlying technology to provide the service. In adopting the LCP concept, the Commission should recognize that the full range of factors, such as these, may be applicable to a carrier's determinations regarding the applicable LCP for a particular service being provided to a school or library. BellSouth urges the Commission not to limit the potential factors to a particular listing of criteria. Indeed, any attempt to limit the factors could unintentionally omit potentially applicable criteria which could appropriately apply, especially as services, technology, and the regulatory framework within which services are offered change from time to time. As the Joint Board recommends, a carrier or a school or library can appeal to the Commission or to a state commission regarding LCP determinations, as needed.

Although BellSouth applauds the Joint Board for recommending, but not requiring, that carriers provide services to schools and libraries at prices lower than the LCP, the Joint Board did not recognize the potential downwardly spiraling effect that below-LCP pricing could have on the LCP itself. In order to avoid this result, the Commission should clarify that the LCP should be determined based upon prices charged for similar services to non-residential customers other than schools and libraries. The Commission should also clarify that certain pricing events, such as promotional offerings, should be automatically excluded from those prices which are relevant to a determination of the appropriate LCP.

The Commission should also recognize, if it adopts the LCP methodology, that the concept of "similar services" and "similarly situated" customers involve considerations of relative proximity in time. The LCP which will apply for a particular carrier submitting a bid will be the LCP at that point in time. Once a service arrangement is offered to the school or library, that LCP is valid until the next point in time when the school or library requests proposals and the

carrier submits a bid. Additionally, the Commission should recognize that a carrier seeking to determine whether it has provided a similar service to similarly situated non-residential customers need review its records only for a limited period of time (i.e., one year) prior to the time the service bid is submitted to the school or library. This would assure that the school or library will have access to the most current competitive prices while at the same time providing at least some protection from the carrier's determination of the LCP's becoming an unwieldy and unreasonably burdensome process.

3. Discounts From The LCP.

The Joint Board has recommended that schools and libraries receive telecommunications services, access to the Internet, and internal connections at a discount from the LCP, using a discount matrix based upon participation in the national school lunch program and adjusted for high cost factors.

a. Amount Of The Discount.

BellSouth supports the Joint Board's recommendation that discounts for schools and libraries not be 100%, in order that, as the Joint Board states, schools and libraries will have a share in the expense. Thus, schools and libraries will be incented to "seek the best pre-discount price and to make informed, knowledgeable choices among their options, thereby building in effective fiscal constraints on the discount fund."⁵⁷ BellSouth also supports the use of some appropriate criteria, such as the national school lunch program criteria recommended by the Joint Board, to determine the specific amount of the discount available to each school or library.

⁵⁷ Order at para. 549.

Whatever criteria is selected, it should be administratively simple and straightforward to use, and easily quantifiable and verifiable. The Commission may also wish to consider a matrix which includes the relative wealth of the community in which the school or library is located which could provide independent local support and investment funding for the school or library. Guidance should be sought from the education community.

Regarding the question of how to best treat private schools under the school lunch approach, one possible solution would be to limit the amount of the discount for private schools to the minimum percentage discount. A private school, however, should be allowed the opportunity to obtain a higher percentage discount on an exception basis by providing verifiable data showing the percentage of its students who would have qualified for the school lunch program (using appropriate school lunch criteria) if it had been available to the private school.

b. Cap On USF And Trigger Mechanism.

BellSouth also supports the Joint Board's recommendations that a cap be placed on the USF, with a trigger mechanism. Whereas BellSouth has, in the past, supported a fund-to-schools approach for implementing Section 254's requirement that USF support mechanisms be "specific, predictable and sufficient"⁵⁸ (and still believes that approach is a valid one), a cap is one means to assure the predictability of the amount of support. In addition, given the Joint Board's recommendation that a first-come, first-served approach be utilized for draws from the USF, the trigger mechanism is one means for assuring that the most needy schools and libraries have at least some dollars left for their own uses in the event they are not as sophisticated or aggressive as

⁵⁸ 47 U.S.C. Section 254(b)(5).

other schools and libraries. If the Commission adopts the Joint Board's trigger mechanism, and the associated provision for carrying unused funds over from one year to the next,⁵⁹ it should clarify whether and how unused portions of the trigger amount are to accumulate from year to year. If unused "trigger" funds are to be carried over, BellSouth suggests that the carry-over be limited to a predetermined period (such as three years) to provide an incentive for eligible schools to take the necessary steps to begin taking advantage of the USF support available to them.

Moreover, the Commission should clarify whether and how any unused amounts of USF support funds are to be carried over to the next succeeding year and the effect any such carry-over would have on carriers' contributions and the total amount of the available funds for that succeeding year. In this regard, it is BellSouth's view that carriers' combined contributions for such a succeeding year should be limited to the total dollar amount of USF funds used in the prior year. The available amount of USF funds in any year would be no greater than \$2.25 billion, thus assuring predictability of the total education fund size.

The Commission should also assure that mechanisms are in place by which carriers can be easily and accurately informed regarding the specific discount applicable for a given school or library. In addition, procedures should be put in place by which carriers, schools and libraries all are informed if and when the draw on the USF is beginning to reach the trigger amount. Full, accurate and timely information regarding the availability of funds will be needed by service providers, schools and libraries for planning purposes. As BellSouth has indicated above,

⁵⁹ Order at para. 556.

information such as this could be included in the Web-site used for the posting of requests for proposals.

c. Schools And Libraries In High Cost Areas.

In addition to the various discounts available to schools and libraries based upon their participation in the national school lunch program, the Joint Board recommends that some consideration of additional need be included based upon the location of a school or library in a high cost area.⁶⁰ BellSouth does not oppose the provision of an additional amount of support for high cost areas, and suggests that the mechanism used to determine high cost locations be the same as that used for core services. The Joint Board has recommended an additional incremental discount for schools and libraries in high cost areas. The Commission could alternatively adopt a plan whereby a smaller high cost incremental discount is provided, with the remaining dollars which would otherwise have been utilized to fund the full amount of the Joint Board's recommended incremental discount being set aside in a special reserve fund for use in funding exceptional requests made by schools and libraries in high cost areas. A school or library believing it faces exceptionally high cost circumstances could apply to the fund administrator for a portion of the set-aside funds, certifying as to its exceptional needs for additional support.

d. Existing Special Rates.

The Joint Board recommends that states be permitted to either require schools and libraries, which already have the benefit of state-mandated special rates, to relinquish those rates if they desire to take advantage of USF support, or to permit schools and libraries to get USF

⁶⁰ Order at paras. 557-560.

support off of existing special state-mandated rates. BellSouth believes that leaving the determination of the survivability of state-mandated special rates is appropriately left to the states.

4. Administrative Details.

There will likely be many administrative details which will need to be worked out in connection with the Commission's USF rules for schools and libraries. For instance, there will need to be means established to assure the proper type and flow of information between schools and libraries, telecommunications carriers, and the fund administrator. BellSouth suggests that an industry-education coalition be formed for the purpose of assisting the Commission in resolving these administrative matters with a view toward establishing mechanisms which encourage timely sharing of information in a format that can be easily understood and efficiently processed and in a manner which is non-burdensome to all concerned.

C. Restrictions On Schools And Libraries.

BellSouth supports the Joint Board's recommendation that the Commission adhere to the restrictions embodied in the 1996 Act regarding what entities are entitled to obtain discounts under Section 254(h)(1)(b). BellSouth also supports the concept under which schools and libraries could participate in consortia for the purpose of aggregating their demand for telecommunications services and networks. BellSouth nevertheless has serious reservations regarding the practical and legal consequences of such arrangements.

First, BellSouth opposes the Joint Board's recommendation that telecommunications carriers be the entities responsible for tracking the allocable shares and discounts attributable to individual members of a consortium. The increased administrative costs associated with such an arrangement, when borne by the telecommunications carrier, would likely increase the cost and

therefore the price of the service itself. From a technical viewpoint, an LCP would not likely exist for such an arrangement for most telecommunications carriers as they do not presently undertake to administer internal allocation and billing arrangements among customers which share an individual telecommunications service. Moreover, the telecommunications carrier will not necessarily know what the allocable shares and responsibilities of each consortium member are, as the use made by each changes from time to time and as consortium members are added and dropped over time.⁶¹ Telecommunications carriers should not have the responsibility for, or liabilities associated with, assuring that the appropriate discounts are applied for each individual school and library. The responsibility for such matters lie with either the consortium or each individual school or library.

While the many associated issues may not be insurmountable, they must be fully considered by the Commission, carriers and the education community alike in order to arrive at a workable solution which neither compromises customer-carrier relationships nor the education community's desire for shared network arrangements, nor contravenes the Act's prohibition regarding resale or transfer for value. It is entirely possible that the sheer market weight of the demand from large consortia would be sufficient to enable schools and libraries to procure needed telecommunications services at affordable rates even without USF support, especially given the increasingly competitive telecommunications marketplace. Thus, the Commission should consider

⁶¹ In addition, as the Commission is aware, numerous unresolved, complex issues are associated with the "split billing" of individual services to multiple customers. See Transport Rate Structure and Pricing, CC Docket No. 91-213, Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking (FCC 94-325), released December 22, 1994 at paras. 127-147, and comments submitted in response thereto.

modifying the Joint Board's recommendation regarding consortia in a manner that would recognize this substantial market power.

VI. HEALTH CARE PROVIDERS.

BellSouth understands the Commission's need for additional information in connection with the Act's requirements under Section 254(h)(1)(A) regarding rural health care providers. At the same time, the questions set forth in the Commission's Public Notice regarding this section reflect a misfocus by the Commission. As BellSouth discusses further below, the Commission must recognize that Section 254(h)(1)(A) provides USF support only for "necessary" telecommunications services; that the carrier is only obligated to provide such services at "rates" comparable to urban rates, not at comparable billed amounts; and that any requirement that USF support be provided for network build-outs is of questionable need and legality.

The Commission should concentrate its efforts in establishing rules that will implement the specific provisions of the statute. The statute circumscribes the scope of permissible support as follows:

A telecommunications carrier shall, upon receipt of a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State...at rates that are reasonably comparable to rates charged for similar services in urban areas in that State....⁶²

As the statute makes clear, only those services that "are necessary" for the provision of health care in a state are subject to support. Thus, the criteria is not whether the service is desirable, useful, convenient or state-of-the-art. Instead, the service must be necessary for the provision of health care in that state. The meaning of the term "necessary" is unambiguous--the service must

⁶² 47 U.S.C. Section 254(h)(1)(A).

be essential, indispensable in the provision of health care services. In addition, the service must be necessary in a state, as well as widely deployed in public telecommunications networks.⁶³

BellSouth supports the Joint Board's recommendation that services at capacities beyond a DS1 level would not qualify for USF support. This, however, does not necessarily mean that all services up to a DS1 automatically would qualify for such support. Circumstances can and will vary among states and, possibly, among rural areas within a state. Hence, what is necessary in one case may be merely aspired to in another. The statute only provides for supporting necessities not aspirations.

The Commission should establish guidelines that can be used for the purpose of preventing frivolous and wasteful requests. For example, the Commission could require each request to be accompanied by a clear and concise statement of the health care need to be satisfied by the service. To constitute a bona fide request, it should be shown that the requested service is widely used by health care providers in the state. The health care provider should be required to show a verifiable plan for use of the telecommunications service which is consistent with the requirements of the Act pursuant to which it has considered and is able to utilize all related components of the telecommunications service to make the healthcare service function appropriately. In addition,

⁶³ The statute contemplates that services which will be supported by the federal universal service fund are those services that "are being deployed in public telecommunications networks by telecommunications carriers." 47 U.S.C. Section 254(c)(1)(C). For the high cost portion of the fund, the services designated for universal service support, through market choices, have been widely subscribed to by a substantial majority of residential subscribers. For the special services eligible for support to health care providers, the analogous criteria would be that these services are widely used by health care providers in the state in the provision of health care services.

the health care provider should demonstrate that it has the terminal equipment that is necessary to utilize the requested service.⁶⁴

The statute specifies that, for a necessary service, the rate charged to the health care provider in the rural area shall be comparable to the rate charged for a similar service in urban areas. It is only the difference between the rate charged to the health care provider and the rate charged to other rural customers that may be supported by the universal service fund. The urban and rural rates should be the rates of the carrier which provides the service to the rural health care provider for the same reasons discussed earlier in Section V.B.2. regarding support for schools and libraries. The individual states will be in the best position to determine whether there is any urban/rural rate differential,⁶⁵ and, if the carrier does not have an urban rate of its own, what the comparable urban rate would be.⁶⁶

On the other hand, the Commission can make clear that the statute only permits the urban/rural rate differential, if any, to be supported. The statute does not permit support for a differential in the dollar amounts charged resulting from occurrences such as distance sensitivity or different rate structures. For example, if the rate structure for a service includes a distance

⁶⁴ The Order states that it does not see the need for a health care provider to certify that it has the wiring, computers and other equipment necessary to use the requested service. Order at para. 729. What is overlooked by the Joint Board is the statutory requirement that the service is necessary to provide health care services. Without the necessary equipment, the telecommunications service would not be used to provide health care services and, hence, would not properly be entitled to support under the statute.

⁶⁵ It is incorrect to presume that rates to rural areas are higher than the rates charged in urban areas. Averaged rates are still prevalent.

⁶⁶ Of course, in the exceptional cases where rural interstate services are involved which are provided by a carrier which has no comparable interstate urban rate, the Commission itself would determine the comparable interstate urban rate.